

EXHIBIT 102

Walsh, Jude E.

March 26, 2008

Augusta, ME

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES)
U.S. ex rel. Ven-A-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
vs.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler

VIDEOTAPED DEPOSITION OF JUDE E. WALSH,
taken pursuant to notice dated March 18, 2008, at
the offices of the Maine Attorney General, Burton M.
Cross Building, 6th Floor, 6 State House Station,
Augusta, Maine, on March 26, 2008, commencing at
9:06 A.M., before Tammy L. Martell, Registered
Professional Reporter, a Notary Public in and for
the State of Maine.

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 On Behalf of the United States of America:</p> <p>4 Ann St. Peter-Griffith, Esq.</p> <p>5 (by telephone)</p> <p>6 U.S. Attorney's Office</p> <p>7 99 NE 4th Street,</p> <p>8 Miami, Florida 33132</p> <p>9 (305) 961-9001</p> <p>10 -and-</p> <p>11 Jeff Fauci, Esq.</p> <p>12 John Joseph Moakley Courthouse</p> <p>13 1 Courthouse Way</p> <p>14 Boston, Massachusetts 02110</p> <p>15 (617) 748-3290</p> <p>16</p> <p>17 On Behalf of Abbott Laboratories:</p> <p>18 Sean P. Malone, Esq.</p> <p>19 Jones Day</p> <p>20 51 Louisiana Avenue, N.W.</p> <p>21 Washington, D.C., 20001-2113</p> <p>22 (202) 879-3939</p>	<p>1 INDEX</p> <p>2 WITNESS: JUDE E. WALSH PAGE</p> <p>3 EXAMINATION BY MR. MALONE..... 008</p> <p>4 EXAMINATION BY MR. KATZ..... 166</p> <p>5</p> <p>6</p> <p>7 ABBOTT EXHIBITS</p> <p>8 NUMBER DESCRIPTION PAGE</p> <p>9 Exhibit Abbott 850-United States' Second</p> <p>10 Supplemental Disclosures,</p> <p>11 12/18/07..... 014</p> <p>12 Exhibit Abbott 851-Notice of Deposition of</p> <p>13 Jude E. Walsh..... 016</p> <p>14 Exhibit Abbott 852-Internet Printout of Jude</p> <p>15 Walsh Bio..... 042</p> <p>16 Exhibit Abbott 853-Letter With Attached Notice</p> <p>17 Of Agency Rule-making</p> <p>18 Adoption and Portions Of The</p> <p>19 MaineCare Benefits Manual,</p> <p>20 9/20/02..... 078</p> <p>21 Exhibit Abbott 854-Memo From Mr. Gessow To</p> <p>22 Interested Parties, 6/26/02. 083</p>
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<p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Good morning. We're</p> <p>4 on the record. This is the 26th day of March</p> <p>5 2008. The time is approximately 9:08 a.m.</p> <p>6 eastern time. We're here today in the matter of</p> <p>7 Pharmaceutical Industry Average Wholesale Price</p> <p>8 Litigation in a cause known as U.S. ex relator</p> <p>9 Ven-A-Care of the Florida Keys, Incorporated,</p> <p>10 versus Abbott Laboratories, Incorporated. Case</p> <p>11 No. 06-CV-1137-PVS. This is civil action in the</p> <p>12 United States District Court for the District of</p> <p>13 Massachusetts. This is the videotaped deposition</p> <p>14 of Sue -- no. Your name, please?</p> <p>15 THE DEPONENT: It is Jude Walsh.</p> <p>16 THE VIDEOGRAPHER: Jude Walsh.</p> <p>17 Counsel, could we go around the room and on the</p> <p>18 phone and introduce yourselves, please.</p> <p>19 MR. MALONE: This is Sean Malone with</p> <p>20 Jones Day, I represent Abbott Laboratories.</p> <p>21 MR. KATZ: Cliff Katz with Kelley Drye</p> <p>22 representing the Dey defendants.</p>	<p>1 Q. Good morning, Ms. Walsh.</p> <p>2 A. Good morning.</p> <p>3 Q. As I mentioned a minute ago, I am Sean</p> <p>4 Malone. I represent Abbott Laboratories on</p> <p>5 behalf of Jones Day. You are probably somewhat</p> <p>6 familiar with the deposition process, but I just</p> <p>7 want to go over one or two ground rules before we</p> <p>8 get started. First, because we have a -- a court</p> <p>9 reporter transcribing the deposition I would ask</p> <p>10 that you try to respond verbally, if possible, to</p> <p>11 my questions. From time to time your attorneys</p> <p>12 may lodge an objection to my questions because I</p> <p>13 have phrased them poorly or for other reasons,</p> <p>14 but I ask that you respond anyway unless you are</p> <p>15 instructed by counsel for reasons of privilege</p> <p>16 not to answer my questions, you understand that?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Okay. Are you represented by counsel</p> <p>19 here this morning?</p> <p>20 A. Yes, I am.</p> <p>21 Q. Okay. And I forgot to mention, I</p> <p>22 realize that you are a little under the weather,</p>

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<p>1 Q. -- Ms. Walsh?</p> <p>2 A. Yes.</p> <p>3 Q. What is your understanding of what this</p> <p>4 document is?</p> <p>5 A. They survey states and we give them the</p> <p>6 information so they can publish it.</p> <p>7 Q. And by -- by they do you mean -- is</p> <p>8 this the National Pharmaceutical Company or --</p> <p>9 A. Council.</p> <p>10 Q. Council?</p> <p>11 A. Yes, that's correct.</p> <p>12 Q. And this document lists all 50 states</p> <p>13 and their dispensing fees, copayment, ingredient</p> <p>14 reimbursement basis, formulary and formulary</p> <p>15 status; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And on the first page Maine is listed</p> <p>18 as having a dispensing fee of \$3.35 and an</p> <p>19 ingredient reimbursement basis of AWP/AWP minus 5</p> <p>20 percent.</p> <p>21 Has -- do you -- do you recall -- I</p> <p>22 recognize that you didn't have any direct</p>	<p>1 3.35-5.35. Do you recall hearing about this</p> <p>2 change in reimbursement mechanism back in 1996?</p> <p>3 A. No.</p> <p>4 Q. And let's flip to the 2002 page which</p> <p>5 at the bottom I believe is 4-45 and at the top of</p> <p>6 the page it says Pharmacy Payment And Patient</p> <p>7 Cost Sharing. Here we have Maine with an</p> <p>8 ingredient reimbursement basis of AWP minus 13</p> <p>9 percent. Do you recall this change in AWP</p> <p>10 reimbursement?</p> <p>11 A. Yes, I do.</p> <p>12 Q. This was during your time with the</p> <p>13 Maine state Medicaid program, correct?</p> <p>14 A. Correct.</p> <p>15 Q. What do you recall about this change in</p> <p>16 reimbursement?</p> <p>17 A. We had to meet certain budget targets</p> <p>18 and in our analysis it looked like we were paying</p> <p>19 more than was appropriate for prescription drugs</p> <p>20 at retail pharmacies and changed our dispensing</p> <p>21 fee from AW -- or our reimbursement mechanism</p> <p>22 from AWP minus 10 to AWP minus 13.</p>
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<p>1 responsibility with this prior to 2000, but do</p> <p>2 you recall how long Maine has had a dispensing</p> <p>3 fee of \$3.35 for its Medicaid program?</p> <p>4 MS. ST. PETER-GRIFFITH: Object to the</p> <p>5 form.</p> <p>6 A. The pharmacies say forever.</p> <p>7 Q. And why do they say that?</p> <p>8 A. Because it hasn't increased forever.</p> <p>9 Q. And you -- you hear complaints about</p> <p>10 that in your current role?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Do you know why it says AWP/AWP minus 5</p> <p>13 percent --</p> <p>14 A. No.</p> <p>15 Q. -- for the ingredient reimbursement</p> <p>16 basis? Okay. I would ask you to turn to page --</p> <p>17 well, the 1996 page of this document. I think it</p> <p>18 is at the bottom it says 3-24.</p> <p>19 A. Mm-hmm.</p> <p>20 Q. And here the Maine ingredient</p> <p>21 reimbursement basis is listed as AWP minus 10</p> <p>22 percent and there is also a dispensing fee of</p>	<p>1 Q. You said in your analysis it looked</p> <p>2 like you were paying more than was appropriate.</p> <p>3 What did you use for your analysis, if you</p> <p>4 remember?</p> <p>5 A. Claims data and acquisition costs.</p> <p>6 Some acquisition costs from pharmacies.</p> <p>7 Q. Did you conduct a survey of some kind?</p> <p>8 A. Not really a survey, but we also looked</p> <p>9 at what other insurers were reimbursing, again</p> <p>10 looking at our public purchasers and see what</p> <p>11 they were reimbursing, to help us determine what</p> <p>12 was appropriate, and other states.</p> <p>13 Q. If the governor had not asked for a</p> <p>14 reduction in budget do you think that the Maine</p> <p>15 Medicaid program would have conducted a survey</p> <p>16 and tried to reduce payment?</p> <p>17 MS. ST. PETER-GRIFFITH: Object to the</p> <p>18 form.</p> <p>19 A. I don't know.</p> <p>20 Q. Would you agree that the impetus for</p> <p>21 the change was the governor's call for a</p> <p>22 reduction in the Medicaid budget?</p>

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<p style="text-align: right;">Page 126</p> <p>1 A. We had another reduction later to AWP 2 minus 15. 3 Q. That's still a pretty big gap. Why -- 4 why was it that Maine did not try to make up that 5 gap and bring its reimbursement rate more in line 6 with some of the results of this study? 7 MS. ST. PETER-GRIFFITH: Object to the 8 form. 9 A. You can't -- you can't achieve your 10 savings with AWP points on generics, you have to 11 achieve it through MACing, and we do do that, and 12 we did do that then. Our average reimbursement 13 on generics now is AWP minus 60. That's what we 14 pay given the -- the way we implement our MAC 15 list. So on average -- actually we did an 16 analysis last month and it is AWP minus 69, so we 17 do have very aggressive generic pricing. 18 Q. So since that time Maine has brought 19 its payment policy more in line with the results 20 of this study? 21 A. Because I haven't read the study fully 22 I -- I can't say.</p>	<p style="text-align: right;">Page 128</p> <p>1 receive and the volume. It is all about volume. 2 Q. By reimbursement you mean the payment 3 for the ingredient cost? 4 A. The payment -- 5 MS. ST. PETER-GRIFFITH: Object -- 6 THE DEPONENT: Go ahead. 7 MS. ST. PETER-GRIFFITH: Object to the 8 form. 9 A. Payment includes ingredient cost plus a 10 dispensing fee, that's considered payment, but 11 volume is important in pharmacies. 12 MR. MALONE: All right. Let's -- let's 13 take a break here and we can pick up after lunch. 14 THE VIDEOGRAPHER: We'll go off the 15 record at 12:03. 16 (A short break was taken.) 17 THE VIDEOGRAPHER: And we're back on 18 the record after a lunch break, this is Tape No. 19 4, the time is 12:57. 20 Q. Ms. Walsh, have you had communications 21 with representatives from Abbott Laboratories 22 over the years?</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. But the numbers that are listed on the 2 first two pages at least of this memo? 3 MS. ST. PETER-GRIFFITH: Object to the 4 form. 5 A. I would say we -- we run a very 6 aggressive MAC program in Maine. 7 Q. Has the dispensing fee changed out in - 8 - along with the increased discount for AWP 9 reimbursement? 10 A. We haven't had a change in dispensing 11 fee since I started with the Medicaid program. 12 Q. How is it then that providers 13 pharmacists would have been able to stay in 14 business if their dispensing fees have remained 15 at \$3.35? 16 MS. ST. PETER-GRIFFITH: Object to 17 form. 18 A. My understanding is the dispensing fee 19 is not how you stay in business in retail 20 pharmacy. 21 Q. And how -- how do you stay in business? 22 A. It is the reimbursement that you</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Yes. 2 Q. On -- in what context? 3 A. I worked with some senior management at 4 Abbott when we were implementing our HIV waiver 5 program to look at a demonstration project with 6 them. 7 Q. Would this have been in the early 90s? 8 A. No. I wasn't in Medicaid in the early 9 90s so it was probably 2003. 10 Q. Any other communications with Abbott 11 that come to mind? 12 A. Well, we work with pharmaceutical 13 manufacturers regularly in the course of business 14 so I would have to say that I am sure. You know, 15 either representatives for their company come to 16 our drug utilization review meetings or 17 participate in our supplemental rebate 18 negotiation process or as a course of business I 19 receive correspondence on new drug profiles and 20 news alerts and things of that nature, so I would 21 say business as usual except for the 22 demonstration project with HIV.</p>

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<p style="text-align: right;">Page 146</p> <p>1 - of prescription drugs?</p> <p>2 A. I mean the ones that I saw were related</p> <p>3 to the pharmacy benefit.</p> <p>4 Q. Did -- did the Maine Medicaid program</p> <p>5 rely upon this guidance in formulating its</p> <p>6 policy?</p> <p>7 A. Sometimes.</p> <p>8 Q. No. 15 in the survey asks are there any</p> <p>9 further actions that CMS could take that would</p> <p>10 assist your program to contain drug costs and you</p> <p>11 list broader FUL lists with timely response to</p> <p>12 market changes. What did you mean by that?</p> <p>13 A. Well, I -- I believe I meant by the</p> <p>14 time we get an FUL we have had it MACed for a</p> <p>15 long time. The federal government is extremely</p> <p>16 slow in capping their generic pricing, and we</p> <p>17 actually do it faster and better and tighter, and</p> <p>18 we take their FUL list but typically our MACs are</p> <p>19 -- are lower in reimbursement than the Federal</p> <p>20 Upper Limit payments.</p> <p>21 Q. And finally on No. 16 says please feel</p> <p>22 free to share -- share any additional comments or</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Ms. Walsh, on the second page there is</p> <p>2 a -- a letter which extends for a couple of pages</p> <p>3 and it is signed -- well, it appears to be signed</p> <p>4 by Larry Reed but there is someone else's</p> <p>5 signature there?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recognize either the signature</p> <p>8 or the name?</p> <p>9 A. It is Deirdre Duzor.</p> <p>10 Q. Okay. And do you know a Ms. Duzor?</p> <p>11 A. She is the coleader of the pharmacy</p> <p>12 team at CMS.</p> <p>13 Q. And are you also familiar with Larry</p> <p>14 Reed?</p> <p>15 A. Yes, I am.</p> <p>16 Q. And also can I ask I see there is a CC</p> <p>17 Jude Welsh, would that be Jude Walsh?</p> <p>18 A. I believe so.</p> <p>19 Q. Okay. Were you typically copied or</p> <p>20 provided correspondence of this nature?</p> <p>21 A. Yes.</p> <p>22 Q. And turning back to the first page this</p>
<p style="text-align: right;">Page 147</p> <p>1 suggestions on Medicaid drug cost containment,</p> <p>2 and you wrote we need a better way to calculate a</p> <p>3 true EAC that would be fair and equitable to</p> <p>4 providers and provide the best price to the</p> <p>5 state. What did you mean by that?</p> <p>6 A. Well, I think that everybody knows that</p> <p>7 the AW fee is a very -- AWP is arbitrary</p> <p>8 somewhat, the whole way we reimburse drugs are</p> <p>9 arbitrary, and it would be, in my opinion, much</p> <p>10 better to really understand how much drugs really</p> <p>11 do cost and then set a payment reimbursement</p> <p>12 system in place to address actual costs instead</p> <p>13 of these surveyed kind of arbitrary figures.</p> <p>14 MR. MALONE: Okay. I will ask a few</p> <p>15 questions about the process of state plan</p> <p>16 amendments, and for that purpose I would like to</p> <p>17 mark another exhibit which we'll call Abbott</p> <p>18 Exhibit 857. For the record this is a four page</p> <p>19 document which is Bates labeled HHC006-0124</p> <p>20 through 0127.</p> <p>21 (Exhibit Abbott 857, Payment Rates</p> <p>22 With Attachments, marked for identification.)</p>	<p style="text-align: right;">Page 149</p> <p>1 letter is dated November 25th, 2003, and it</p> <p>2 states we have reviewed Maine State Plan</p> <p>3 Amendment, SPA, 03-008 that proposes to modify</p> <p>4 the state's payment methodology for drugs on the</p> <p>5 state's direct supply list. We are unable to</p> <p>6 approve it as submitted. And then it appears</p> <p>7 that the state lists a number of questions that</p> <p>8 it wants answers to.</p> <p>9 Can you describe generally the</p> <p>10 interaction between your office and CMS when it</p> <p>11 comes to providing state plan amendments or</p> <p>12 approving state plan amendments?</p> <p>13 MS. ST. PETER-GRIFFITH: Object to the</p> <p>14 form.</p> <p>15 A. CMS is the approving body for state</p> <p>16 plan amendments and when we want to make policy</p> <p>17 changes that affect reimbursement we go through a</p> <p>18 regulatory process within the state and we go</p> <p>19 through a state plan amendment process at the</p> <p>20 federal level, and we submit a state plan</p> <p>21 amendment, which you have here, and a lot of</p> <p>22 times they submit RAIs, Requests for Additional</p>

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